SOUTH DELTA WATER AGENCY

4255 PACIFIC AVENUE, SUITE 2
STOCKTON, CALIFORNIA 95207
TELEPHONE (209) 956-0150
FAX (209) 956-0154
E-MAIL Jherrlaw@aol.com

Directors:
Jerry Robinson, Chairman
Robert K. Ferguson, Vice-Chairman
Natalino Bacchetti
Jack Alvarez
Mary Hildebrand

Counsel & Manager:
John Herrick

January 26, 2011

Via E-Mail deltapanscoping@deltacouncil.ca.gov

Philip Isenberg, Chair
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Re: NOP Scoping Comments for Delta Plan

Dear Chairman Isenberg:

On behalf of the South Delta Water Agency, I would like to offer the following comments to the DSC's efforts to begin the environmental evaluation of its Delta Plan. We recognize the magnitude of your assigned take, but encourage you to include the following in your evaluation and analysis.

It is important to note at the outset that the recent failure of the BDCP process to produce the promised documents on time now precludes the DSC from evaluating and incorporating (as may be allowed by statute) habitat conservation plans and conveyance projects they sought. This is important in that the DSC is now responsible for making all the necessary evaluations and decisions and cannot simply review the BDCP documents for consistency with the controlling statutes.

Just as important is the fact that we now know beyond any doubt that the BDCP process was geared at increasing exports from the Delta as per the clear statements by the BDCP parties at the recent Assembly Committee meeting. Since the DSC statutes require a focus on decreasing reliance on the Delta for water supply and the protection and enhancement of agriculture in the Delta (among other equally worthy goals/directions), the BDCP's focus on increased exports and large scale conversion of Delta agricultural lands for habitat to mitigate additional exports, we can conclude the BDCP process will not result in anything that meets the statutory requirements you are operating under.

With that said, we believe your environmental review (and your Plan) should consider and evaluate the following:

1. The starting point in determining how to provide a more reliable water supply for California is to know what the supply is. As was done when the SWP was being developed, there must be a calculation of the yield of the entire system which feeds the Delta. We have copies of the Weber Report which includes such evaluations, and know that DWR and USBR must also have similar studies. The Weber Report indicates that during a repetition of the 1928-34 drought, the system feeding the Delta produces approximately 17.6 MAF. The Report also indicates that in-basin (non-export) needs during this same time are approximately 25.6 MAF; resulting in a net deficit of nearly 8MAF per year of the drought.

This information indicates that the reliability of a supply during such a drought is nil, or more correctly, there is no reliable supply under such conditions. Of course, depending on when precipitation falls and any carry-over from the years before this drought, there may be some small increment of supply available, but the fact remains that under certain conditions there is no or little water in the system for exports. This leads to our second point.

2. Once we have determined the amount of water that is available, we then have to determine how it is/should be allocated. We currently operate under a priority system which generally requires junior water right holders to go without before senior water right holders have any decrease in their supply. The intricacies of applying this system under 1928-34 drought conditions would likely be difficult and contentious, but nevertheless that is the system.

Thus, when the system produces less that the in-basin needs, the reliable supply from the Delta is zero. As the yield increases, the amounts available for export (what is reliable) will increase. However, in-basin needs under the water rights priority system are only half of the calculation. Before any export water is available, we must also know what are the needs of the environment, which includes not only water quality needs for fish and wildlife (which can be evaluated against other factors) but also ESA needs (which do not appear to be junior to any other need). The result of course is that water for exports is further limited, and the numbers in the Weber Report are probably much worse than they first appear.

Again, there are always opportunities for there to be ***some*** water for exports even under these drought conditions as all stream flow for fishery needs may not need to continue as outflow. Other parties are commenting on how the needs of the environment should be calculated or suggesting what those needs are. Regardless of the eventual decision on the water needed for that purpose, there is no doubt that current expectations of 4-7MAF of exports under all conditions is not possible. If the DSC does not currently have the Weber Report or the similar

evaluations by the DWR and USBR, it should promptly acquire them. It is important to note that this precondition to determining reliability was intentionally avoided by the BDCP process.

3. As the Council proceeds, it must also take into account the concept of various parties mitigating their own impacts. Just as a person is not responsible for cleaning up his neighbor's yard, all Delta water users are not responsible for all conditions in the Delta. Therefore, as the DSC decides what to plan for the Delta's future, it must identify who has caused what and require each to mitigate its impacts. The SWP's authorizing statutes require it to mitigate all of its impacts (makes mitigation/restoration a cost of the contractors while making enhancement a general fund obligation). Similar obligations rest with the CVP.

This approach is of course contentious. However, it is only contentious with the parties who seek to avoid mitigating their impacts. If a city illegally discharges toxic chemicals into the Delta, no one argues that everyone else should pay for the cleanup. Although an exact measurement of SWP and CVP impacts may be difficult, it is not impractical or impossible; it is both required and fair. The DSC can find good support for this approach in the language of the recent Biological Opinion for smelt which concludes that although many factors affect fisheries, the fundamental changes in hydrodynamics caused by the projects are the main reason for the decline in that species. In fact, these fundamental changes are what make the other factors relevant.

This issue is even more clear when one examines the southern Delta. The operation of the SWP and CVP lowers water levels, creates and exacerbates null zones and results in approximately 400,000 tons of salts entering the southern Delta via the San Joaquin River each year. Any plan for the Delta must include effective mitigation for these impacts, directly, clearly and solely caused by the projects. This leads to our next point.

4. In the evaluation of alternate conveyance facilities, one must first understand the basics of the Delta hydrodynamics. Due to upstream development, especially including the CVP's Friant project, the flows on the San Joaquin River have been decreased to a significant degree. The joint USBR and SDWA 1980 study quantifies these decreases. The DSC should undertake an update of this evaluation to see how current minimum flows affect this study and better understand how flows currently compare to pre-project conditions.

Notwithstanding the results of such an update, the flow in the San Joaquin during most all summer months is significantly less than export pumping at the SWP and CVP stations. This means that none of the San Joaquin River water reaches the Bay. Since the San Joaquin River contains the above mentioned added salts, it means that those salts never reach the Bay and are not flushed out of the system.

Some of those salts remain in the area; some are trapped in the above mentioned null zones, while some remain in the local soils, and some are "re-exported" at the SWP and CVP pumps. Regardless of any purported benefits of an isolated facility, such a facility would mean less or no export of San Joaquin salts in the southern Delta. If less or no salts are exported, then more salt will remain in the null zones and in the local soils. The impacts from this would be catastrophic and would necessarily destroy local agriculture; something clearly contrary to the DSC's Delta Plan statutes.

The above illustrates conditions during a typical summer season. However, a cursory look at flow data indicates that these conditions sometimes occur during most of many years. This means that the opportunities to flush salts out of the area (high flow events) are few and far between. Thus, and proposal to use an isolated facility to export water will cause severe damage in the southern Delta. These conditions also explain why the USBR and DWR are charged with meeting the southern Delta water quality objectives for agricultural beneficial uses. One can not embark upon a Delta Plan that would exacerbate the adverse conditions in the southern Delta to benefit exporters when exports caused the adverse conditions. This leads to our next point.

5. The Delta Plan must include either assumptions or specified actions to comply with all relevant water quality obligations, statutes and other regulations. For example, the immediate above referenced the southern Delta objectives, or salinity standards. Whereas BDCP simply assumed compliance with those standards, the DSC should note that compliance is not currently occurring and that DWR and USBR have no plans to achieve compliance. No Delta plan can simply assume standards are being met when they are in fact not being met and no one anticipates meeting them.

Similarly, the other and numerous standards must also be met, or the Plan must indicate how that would be done. In 2009 we saw that instead of having the required 11,400 cfs of outflow (the X2 standard) we had 7,000 cfs of outflow while exports were 4,000 cfs. No serious Delta Plan can assume that mandatory water quality objectives will be violated in order to satisfy export needs unless of course we assume water supply reliability supercedes all other concerns. To the contrary, the reliable supply is the amount left ***after*** such things as flow and quality standards are met.

Numerous other statutes and regulations are also relevant: CVPIA requires the doubling of certain fish species; PL 108-361 requires the Bureau to have a plan to meet all of its water quality obligations while decreasing its use of New Melones for such purposes; Bureau and DWR permits require outflows and instream flows; TMDL's require the Bureau to address its contributions of salt and boron to the San Joaquin River; and CESA requires DWR to have a take permit at the SWP pumps (which it does not have) to just name a few.

The point is that the Delta Plan must explain how these current obligations are or will be met. It cannot simply assume the obligations will be met or changed as the BDCP process does. It is clear that the SWRCB will not enforce restrictions against the projects. Hopefully the Delta Plan can help correct this situation.

6. Habitat evaluations and recommendations should begin with some sort of inventory of that which currently exists, and then compare it with that which existed 10, 20, and 30 years ago. If the results indicate that there has been little or no loss of habitat over this time, then the logical conclusion is that significant amounts of new habitat are not necessary, though perhaps desirable. This is important as many parties argue that the need to maintain and increase exports will require additional habitat. We submit that is a backwards analysis. Sufficient habitat is certainly necessary. However, since reliance on the Delta for export water must be decreased, the argument for more habitat to support current (or even increased) exports must fail. As we have seen above, the clear fact that there is little or no export water available under many conditions indicates that we may not need more habitat, we simply need to decrease export levels to that which is sustainable.

The analysis should also evaluate how in-Delta farming contributes to habitat. The hundreds of miles of irrigation and drainage canals provide hundreds if not thousands of acres of habitat. Many farmers flood their fields during times when migratory water fowl are present. Levees too provide hundreds of miles of habitat.

Mr. Tom Zuckerman of Central Delta Water Agency has previously contributed oral and written comments regarding Delta agriculture, levees, and water policy, which we hereby incorporate into these comments. I apologize that these comments are not more comprehensive, but look forward to commenting further, especially on the expected draft plans. Please feel free to contact me if you have any questions or need copies of the documents I have referenced herein.

Very truly yours,

JOHN HERRICK